

RYAN, PHILLIPS, UTRECHT & MACKINNON

ATTORNEYS AT LAW

\*NONLAWYER PARTNER

1133 CONNECTICUT AVENUE, N W  
SUITE 300  
WASHINGTON, D C 20036

(202) 293-1177  
FACSIMILE (202) 293-3411

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December 15, 2004

Lawrence Norton, Esq.  
General Counsel  
Office of the General Counsel  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

*Re. MUR 5607, James Socas*

Dear Mr. Norton:

This is the response of our client, James Socas, to the complaint filed in the above-captioned matter under review. For the reasons stated below, we respectfully request that the Commission close this file and take no further action with respect to the respondent.

James Socas was the Democratic candidate for Congress from the tenth district of Virginia. The complaint in this matter was filed by Mr. Socas' general election opponent, alleging that Mr. Socas failed to file the appropriate notification form of expenditures from the candidate's personal funds with the Commission and with the opponent's campaign. Despite the fact that Mr. Socas's opponent won this race decisively, he chose to lodge a formal complaint over the inadvertently late filing of one report.<sup>1</sup>

Pursuant to the Federal Election Campaign Act of 1971, as amended, (the "Act"), contributions of candidate's personal funds in the waning days of a campaign are disclosed in two ways. If the contributions are substantial, under the so-called "millionaire's amendment," a candidate for the House of Representatives must file a "Form 10," 24-hour Notice of Expenditures of Personal Funds when the candidate makes expenditures exceeding \$350,000 from the candidate's personal funds. In addition, for

<sup>1</sup> Complainant alludes to the fact that respondent's Form 2 did not indicate that personal funds would be contributed. However, the circumstances clearly changed over the course of the campaign for respondent, both in terms of the anticipated fundraising disparity with his opponent's campaign, and in the nature of the vitriolic personal attacks that were made on respondent personally by his opponent, through, e.g., television ads attacking respondent's very standing to run in this race. Those personal attacks necessitated that respondent defend himself and contribute personal funds to do so

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all contributions of \$1000 (or more in the case of candidate personal funds), principal campaign committees must file 48-hour notices on such contributions received after the 20<sup>th</sup> day, but more than 48 hours, before 12:01 a.m. of the day of the election, including contributions made by the candidate.

Complainant does not dispute that respondent's 48 hour notice was timely filed, but complains about the failure to file the Form 10. On October 27, 2004, the Socas for Congress Committee (the "Committee") timely filed a 48 hour notice of a contribution received from the candidate in the amount of \$150,000. The Committee had prepared this form on the date of the contribution (October 25, 2004) and duly filed it within 48 hours.

Respondent's Committee also did, in fact, file the required Form 10, both with the Commission and with the opponent's campaign. Upon information and belief, the Commission-filed copy is and has been publicly available via the Commission's public website, [www.fec.gov](http://www.fec.gov), since October 28, 2004. In addition, as complainant notes, the opponent's copy was provided on the same date.

Respondent acknowledges the lateness of the filing, albeit by only 48 hours. Regrettably, respondent's Committee became confused as to the overlay of the filing requirements in the pre-election period, beginning with the 20<sup>th</sup> day before the election. The Committee was under the impression that, in this period, the "regular" 48 hour notices took precedence over other filings pertaining to the receipt of contributions. Unfortunately, nothing in the Commission's publicly available guidance or materials dispels this impression and clearly instructed respondent that there were dual and duplicative filing requirements.

In addition, the Committee was unclear as to the effect of the millionaire's amendment where, as here, increased contribution limits were not triggered. As the Commission has noted,

A candidate with a significant fundraising advantage over a self-financed opponent might not receive an increased contribution limit. In this way, the regulations avoid giving increased contribution limits to candidates whose campaigns have a significant fundraising advantage over their opponents.  
<http://www.fec.gov/pages/brochures/millionaire.shtml>.

In fact, respondent's opponent enjoyed such a financial advantage, outraising him threefold.<sup>2</sup> Regrettably, respondent misunderstood the import of such a huge financial advantage under the regulations, assuming, albeit incorrectly, that it alleviated the need for filing a Form 10, if, as here, the adjustment in the limits was not going to be triggered. Such a misconception is understandable, given the fact that this was the very first cycle these complex requirements were in place.

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<sup>2</sup> According to the latest FEC reports available at [www.fec.gov](http://www.fec.gov), respondent's opponent had raised in excess of \$1,450,000, as compared to \$419,000 for respondent, a disparity of over \$1,000,000

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In this case, neither the Commission nor the public record was denied the information contained in the Form 10. In fact, complainant discovered the filing issue by reviewing the public record at the Commission and observing the 48 hour report duly and timely filed by respondent, disclosing the identical information as contained in the Form 10. Thus, the Commission, the public, including the media, and the opposing campaign all possessed the relevant information by virtue of the respondent's filing and its availability on the Commission's website.

Moreover, this case can be distinguished from those where a candidate contributes the full threshold amount of \$350,000 late in a campaign. Complainant admits it was fully aware at that time of how much respondent had contributed, by virtue of respondent's past FEC reports and 48 hour notice. Thus, even the information provided by complainant indicates that this was an inadvertent omission, and nothing more.

This is the first election cycle that the Commission has implemented the millionaire's amendment. Because the regulated community has not yet established a pattern of compliance and has only recently become familiar with these new requirements, there will be naturally be some cases of confusion and lack of clarity. This is such a case.

We would respectfully urge the Commission to focus its resources on educating the regulated community so that they fully understand the new and varied filing requirements, rather than spending time and energy on those who attempt to comply but, perhaps, inadvertently miss a single deadline. Even during the 48 hours when the report had not been filed, the public still had the same information available by virtue of the 48 notice filed by respondent. For that reason, the Commission should close this file and take no further action against respondent, James Socas.

Respectfully submitted,



Eric F. Kleinfeld  
Counsel to Respondent